

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.10686 of 2004

Between:

Bheemagani Swamy, S/o. Ramaiah, 40 years,
R/o. Chinnakandukuru Village, Yadagirigutta Mandal, Nalgonda District.

...PETITIONER

AND

1. The Election Tribunal cum-Principal Junior Civil Judge, Bhongir, Nalgonda District.
2. The District Collector, Nalgonda.
3. The District Panchayat Officer, Nalgonda, Nalgonda District.
4. The Divisional Panchayat Officer, Bhongir, Nalgonda District.
5. Bheemagani Ravi, S/o. Narasaiah,
R/o. Chinnakandukuru Village, Yadagirigutta Mandal, Nalgonda District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or writ one in the nature of writ of Mandamus, declaring the action of respondent No. 1 in allowing the O.P.No.2 of 2003, dated 06.02.2004, in setting aside the impugned Order in Proceedings No.1329/2002 B(1) (pts), dated 03.03.2003 as arbitrary, illegal, unjust and unconstitutional and consequently set

aside the same.

Counsel for the Petitioner: SMT.N.SHOBA

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEVELOPMENT

Counsel for the Respondent No.5: MR.A.RAJASEKHARA REDDY

The Court made the following:

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ORDER:

The petitioner herein is a resident of Chinnakandukuru Village of Yadagirigutta Mandal, Nalgonda District. He is aggrieved by the order, dated 06.02.2004 passed by the Court of the Principal Junior Civil Judge-cum-Election Tribunal, Bhongir in O.P.No.2 of 2003. By impugned order, the learned Principal Junior Civil Judge declared the fifth respondent as qualified to continue as Sarpanch of Chinnakandukuru Village.

The fourth respondent was elected as Sarpanch in the election held on 20.08.2001. On a complaint made that he incurred disqualification under Section 19(3) of the A.P.Panchayat Raj Act, 1994 ('the Act' for brevity), the second respondent herein by proceedings dated 03.03.2003 disqualified the fifth respondent for being continued as Sarpanch of the said village. Aggrieved by the same, the fifth respondent filed Writ Petition, being W.P.No.4103 of 2003. This Court disposed of the Writ Petition at the admission stage on 10.03.2003 giving liberty to the petitioner to raise the dispute before the Court having jurisdiction over the area. This Court also observed that in view of the mandate envisaged under sub-section 2 of Section 22 of the Act, the fifth respondent herein shall be entitled to act as if he is qualified. Be that as it is, the fifth respondent thereafter filed O.P.No.2 of 2003 before the first respondent, who by impugned order allowed the O.P., holding that the fifth respondent is not disqualified under Section 19(3) of the Act. In the said O.P., the petitioner herein is arrayed as fourth respondent, who has challenged the orders of the learned Principal Junior Civil Judge in O.P.No.2 of 2003.

This Court while admitting the Writ Petition suspended the impugned order, dated 06.02.2004. It appears, in view of the orders of suspension passed by this Court in W.P.M.P.No.13560 of 2004, dated 28.06.2004, the District Collector issued another proceedings removing the fifth respondent from the office of the Sarpanch. The fifth respondent moved this Court by filing W.V.M.P.No.1758 of 2004. The matter was heard finally at the interlocutory stage itself with the consent of learned counsel for the petitioner, learned counsel for the fifth respondent and learned Assistant Government Pleader for Panchayat Raj. Learned counsel for the petitioner, Ms.P.Vijaya Lakshmi relies on Section 22(1) of the Act and submits that the Court of Principal Junior Civil Judge has no jurisdiction to decide the qualification or disqualification of the Sarpanch under Section 22(1) of the Act. She however does not deny or dispute that pending the adjudication of the question whether a Sarpanch is disqualified or not, such Sarpanch is entitled to continue to act as if such Sarpanch is disqualified to act.

Learned counsel for the fifth respondent, Sri A.Rajasekhar Reddy and learned Assistant Government Pleader for Panchayat Raj did not dispute or deny the legal position that it is only the District Judge having jurisdiction over the area to decide the question of disqualification of Sarpanch, at the instance of such Sarpanch or executive authority or any person who alleges that such Sarpanch is disqualified. It is brought to my notice that under Section 22(1) of the Act as it existed, no doubt, the District Munsif having jurisdiction over the area is competent to decide such questions. However by A.P.Panchayat Raj (Amendment) Act, 2002 (Act No.22 of 2002), which came into force with effect from 20.06.2002 appear to decide the question of qualification or disqualification of a qualified Sarpanch is conferred on the District Court having jurisdiction over the area. Therefore, even by the date of filing of O.P.No.2 of 2003, the learned Principle Junior Civil Judge was not competent authority. In that view of the matter, the impugned order, dated 06.02.2004 is void as the same suffers from inherent lack of jurisdiction. The same is liable to be set aside.

As per sub-section 2 of Section 22 of the Act, pending a decision by the District Court as to disqualification of a Sarpanch, such Sarpanch shall be entitled to act as if he is qualified or not disqualified. This benefit is also available to the fifth respondent. Therefore, he shall have to be continued as Sarpanch till the decision is given by the District Court.

Accordingly, for the above reasons, the Writ Petition is allowed. The order dated 06.02.2004 passed by the learned Principal Junior Civil Judge-cum-Election Tribunal, Bhongir is set aside. O.P.No.2 of 2003 shall stand remitted to the Court of the Principal District Judge, Nalgonda with a direction to dispose of the same within a period of eight weeks from the date of receipt of a copy of this order. Learned Principal Junior Civil Judge shall forthwith send the record of O.P.No.2 of 2003 to the learned District Judge, Nalgonda after receiving the copy of this order. Needless to say that having regard to Section 22(2) of the Act, the fifth respondent shall be continued as Sarpanch of Chinnakandukuru village.

The Writ Petition, with the above observations and directions, is allowed with costs of Rs.3,000/- (Rupees three thousand only).

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(V.V.S.RAO, J)

7th September 2004

NOTE: Wire at party's cost

B/O

RRB

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Election Tribunal cum-Principal Junior Civil Judge, Bhongir, Nalgonda District.
2. The District Collector, Nalgonda.
3. The District Panchayat Officer, Nalgonda, Nalgonda District.
4. The Divisional Panchayat Officer, Bhongir, Nalgonda District.
5. Two CCs to G.P. for Panchayat Raj & Rural Development, High Court Buildings, Hyderabad (OUT).
6. Two CD copies.